

**UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF MASSACHUSETTS**

PRESIDENT AND FELLOWS OF  
HARVARD COLLEGE and  
MASSACHUSETTS INSTITUTE OF  
TECHNOLOGY,

Plaintiffs,

v.

Civil Action No. 1:20-cv-11283

UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY; UNITED  
STATES IMMIGRATION AND  
CUSTOMS ENFORCEMENT; CHAD F.  
WOLF, in his official capacity as Acting  
Secretary of the United States Department of  
Homeland Security; and MATTHEW  
ALBENCE, in his official capacity as Acting  
Director United States Immigration and  
Customs Enforcement,

Defendants.

**DECLARATION OF ALAN M. GARBER**

I, Alan M. Garber, hereby state under the penalty of perjury that the following statements are true and accurate to the best of my knowledge, and that I could testify to these matters if called to do so:

1. I am Provost of Harvard University (“Harvard” or the “University”), a role I have held since 2011. As Provost, I oversee academic activities throughout Harvard’s twelve degree-granting schools.

2. I am trained as a physician and economist. In addition to serving as Provost, I am the Mallinckrodt Professor of Health Care Policy at Harvard Medical School, a Professor of Economics in the Harvard Faculty of Arts and Sciences, a Professor of Public Policy in the Harvard Kennedy

School of Government, and a Professor in the Department of Health Policy and Management in the Harvard T.H. Chan School of Public Health.

3. Across Harvard's twelve degree-granting institutions, Harvard enrolled more than 23,000 students in the 2019-2020 academic year, including approximately 5,000 students who study in the United States on nonimmigrant student visas. Students travel from every state of the United States and virtually every country in the world to attend Harvard.

4. Because of my role as Provost, as well as my training in medicine, I have been deeply involved in Harvard's response to the COVID-19 pandemic. Harvard's administrators have worked with Harvard faculty and staff—including experts in infectious diseases, immunology, virology, epidemiology, biostatistics, crisis management, economics, and health care policy—state and local leaders, administrators and experts at other universities, and experts around the world to develop a response to COVID-19 that prioritizes both the health and safety of the Harvard and greater Boston communities and provides opportunities for students to continue their educational pursuits.

5. On March 10, 2020, Harvard President Lawrence Bacow announced that the University would transition to virtual instruction for the remainder of the semester, and asked that students not return to campus after the upcoming spring break. That decision, in which I was involved, was made with the dual objectives of providing the best possible education to Harvard's students while limiting the spread of COVID-19 among students, faculty, and staff.

6. Since the initial decision to transition to remote learning for the remainder of the Spring 2020 semester, Harvard has worked tirelessly on planning for the Fall 2020 semester. Harvard spent weeks determining the course of action for the Fall 2020 semester that would most effectively balance the health and safety of the campus community and the educational experience of Harvard students.

7. Public health experts and peer institutions have helped inform that plan. Harvard has convened or participated in several committees and groups in developing the University's response to the COVID-19 pandemic. For example, the University Coronavirus Advisory Group, which I chair, is comprised of 20 individuals from across the University, affiliated hospitals, and MIT, and is tasked with advising the University on approaches for limiting viral transmission on campus. The Harvard University Health Services Medical Expert Advisory Group, made up of eight experts in epidemiology, infectious disease, and emergency preparedness, advises the University on COVID issues related to health services for the University. A 12-member Face Mask Committee advises the University on providing adequate and effective face masks for on-campus community members.

8. Harvard has also collaborated with other institutions and public officials in responding to the COVID-19 pandemic. For example, I am a member of the Massachusetts Higher Education COVID-19 Testing Group, which includes administrators from 15 colleges and universities in Massachusetts, and which has provided guidance to the Governor of Massachusetts on testing strategy for higher education institutions.

9. In addition to the formal committees and groups, Harvard has consulted with experts in epidemiology, disease modeling, testing and screening, building and ventilation design, and medical subspecialties to address safety protocols for any in-person instruction.

10. Based on our formal and informal meetings and collaborations, Harvard determined that it would be extremely difficult—if not impossible—to hold classes in lecture halls and other classrooms without a substantial likelihood that COVID-19 would spread rapidly and widely on campus, endangering the health and lives of those on and off campus.

11. Public health considerations have been at the forefront of our deliberations. Among other factors, we considered, in the context of what we currently understand about the transmission and spread of COVID-19, the safety of our classrooms, campus housing, and other campus

buildings. With respect to classrooms, we determined that it would be costly and time-prohibitive to install the necessary ventilation systems to prevent the spread of the virus, or to otherwise configure most classrooms to ensure safe distancing. With respect to campus housing, which is largely dormitory-style, we determined that we could only provide quarantine and isolation capacity, with the possibility of limited social distancing, for 40% of our undergraduates at any time. Furthermore, we considered that it would be difficult under normal density conditions to prevent students from deviating from practices known to reduce the spread of COVID-19 (e.g., removing masks or declining to maintain appropriate distancing).

12. We also considered the health and safety of faculty and campus staff. The median age of the faculty members of the Faculty of Arts and Sciences (which includes Harvard College), for example, is over 60, meaning that many are at higher risk of developing complications from COVID-19. Many of our staff are also at increased risk for contracting COVID-19, in particular those staff members whose work brings them into close contact with students, such as dining hall and dormitory staff. Many of those workers live in communities where the rates of complication from infection of COVID-19 are highest, which heightens the risk that staff members, their families, and their communities could become infected or face complications if remote learning and reduced density strategies were not in place.

13. Additionally, although we have learned much about COVID-19 in the past several months, a tremendous amount of uncertainty remains. Some of the questions experts have not yet answered are the extent to which a person infected with COVID-19 has any immunity from future infection and the duration of any such immunity; why some individuals with documented COVID-19 infections do not have antibody levels that indicate exposure to the virus; and the extent to which the virus may be transmitted even when taking precautions such as social distancing, washing hands, and wearing masks.

14. Because a significant portion of Harvard's undergraduate and graduate student community is comprised of international students, the ability of students who hold nonimmigrant student visas to continue their education at Harvard also played a key role in our decision-making process. On March 13, 2020, the United States Immigration and Customs Enforcement ("ICE") issued COVID-19 Guidance for Student and Exchange Visitor Program stakeholders ("March 13 Guidance"). Pursuant to the March 13 Guidance, students in the United States holding F-1 or M-1 visas are allowed to "count online classes towards a full course of study" in the event their schools temporarily stopped in-person classes, regardless of whether the visa holders remained in the United States or departed the United States. The March 13 Guidance stated that it would remain "in effect for the duration of the emergency." Based on the significant time, effort, and coordination required to plan for and implement public safety measures on campus, Harvard had no choice but to rely on the March 13 Guidance in preparing for the Fall 2020 semester.

15. The majority of Harvard's 12 degree-granting schools will operate in a full remote learning environment for at least the Fall 2020 semester. Certain of Harvard's schools will conduct the majority of instruction virtually, with limited in-person instruction. For example, Harvard Medical School and Harvard Dental School will continue to offer limited clinical education as required by licensure bodies. Harvard Business School will also have a hybrid setup that facilitates teaching to a mix of in-person and remote students.

16. On July 6, 2020, President Bacow, Edgerley Family Dean of the Faculty of Arts and Sciences Claudine Gay, and Danoff Dean of Harvard College Rakesh Khurana announced that up to 40% of Harvard College students, including all first-year students, would return to campus. A copy of that announcement is attached as Exhibit 1. Limiting the number of undergraduate students who will return to campus in Fall 2020 will allow for single-occupancy dorm rooms, limits on the number of individuals sharing bathrooms, and a sufficient number of isolation and quarantine rooms.

Academic programming for Harvard College students who return to campus will remain remote in order to maintain adequate safety protocols. Apart from the first-year students, other students who will be permitted to return to campus include those who are unable to access the online curriculum effectively from off-campus locations due to a variety of factors, such as limited or no access to the internet and living conditions not conducive to study. Many of these students are international students.

17. Harvard's goal is to welcome all students back to campus for in-person learning as soon as it is safe to do so. At this stage, however, it would not be feasible for Harvard to safely implement University-wide in-person learning for the Fall 2020 semester. The decision to continue remote learning through the Fall 2020 semester was due to, among other considerations, the time and expense of implementing safety measures in our classrooms and other campus facilities, and the difficulty of protecting the health and safety of our students, faculty, and staff. Harvard invested a substantial amount of time in devising, planning, and implementing the Fall 2020 semester in a manner that did not anticipate widespread in-person learning, and it would not be possible for Harvard to implement the necessary safety measures required for University-wide in-person learning by September 2, 2020 (the first day of the Fall semester for most of Harvard's schools), particularly in light of our evolving understanding of COVID-19. Indeed, the schools that are planning to offer limited in-person instruction decided against offering full in-person instruction in large part because of the challenges of protecting the health and safety of those on campus.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 8, 2020

/s/ Alan M. Garber

Alan M. Garber